IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.986 OF 2004
IN
SUIT NO.847 OF 2004

M/s.Patson Constructions
& Ors. ..Plaintiffs.

Vs.

Gagangiri Premises Co-op.
Society Ltd. & Ors. ..Defendants.

Mr.Shailesh Shah i/b.Mr.Baptist D'Souza for the Plaintiffs.

Mr.V.P.Sawant with Mr.A.Z.Mookhtiar for Defendant No.1.

Mr.P.G.Lad for Defendant Nos.3 to 6 and 8.

CORAM : S.J. VAZIFDAR, J.
DATED : 30TH AUGUST, 2006

P.C. :

In this Notice of Motion, the Plaintiffs have sought the usual interlocutory reliefs in a suit filed under section 6 of the Specific Relief Act.

2. Plaintiff No.2 is a partner of Plaintiff No.1. The Plaintiffs were engaged by the first Defendant society for the purpose of construction of certain premises. There was a dispute in regard thereto. Suit No.4292 of 1996 was filed by the society against the Plaintiffs in that regard. By an order

dated 9.2.1998 a decree in terms of the consent terms was passed by this Court. Clause 8 of the consent terms expressly provided that the Plaintiffs herein were bound and liable to hand over 15 shops out of the 16 shops to the first Defendant.

3. Despite the aforesaid decree, the Plaintiffs claim to have handed over only 14 shops and claim to have held on to one shop belonging to Defendant No.3.

4. The Plaintiffs claim to be entitled to hold on to the said shop on the ground that they had carried out certain extra work in respect of the said shop of the value of about Rs.3,40,000/- for which they have not been paid. The Plaintiffs filed Suit No.59 of 1996 for recovery of the said amount. According to the Plaintiffs, Defendant No.3 thereafter took forcible possession of the said shop from the Plaintiffs.

5. The Plaintiffs' claim against Defendant No.3 is only in damages. The Plaintiffs however claim that rightly or wrongly they retained possession of the said premises and intended to retain possession till they are paid the costs of the alleged extra work.

6. In Clause 8 of the consent terms it is expressly provided that the Plaintiffs are liable to give possession of 15 shops. Even assuming that the Plaintiffs did not give possession of the said shop to Defendant No.3, the same would be in breach of the consent terms and in respect whereof a decree in terms of the consent terms has been passed. Thus, on this ground itself, viz. that the Plaintiffs are in breach of the order in terms of the said consent terms, the Plaintiffs are not entitled to any discretionary reliefs.

7. Further, the Plaintiff's case that they are in possession of the said premises, is also not well founded.

8. Mr.Shah, the learned counsel appearing on behalf of the Plaintiffs relied upon a letter dated 5.11.2002 addressed by the first Defendants society to the Plaintiffs in which the society stated that the said shop is in the Plaintiff's possession and that the possession thereof has not been handed over to Defendant No.3 as he had not cleared the Plaintiff's dues for the extra work.

9. At first blush the reliance upon the letter appears to be well founded. However, as rightly pointed out by Mr.Sawant, the learned counsel appearing on behalf of Defendant No.1, this letter was written at the request of the Plaintiffs and for their benefit. The same is clear from the endorsement below the signature, which reads as under :

> "C.C. to Revenue Dept. Govt. of Maharashtra (as per your advise)"

That this letter was obviously written to accommodate the Plaintiffs, is clear from various other documents.

10. For instance, by a letter dated 25.9.2002 the Plaintiffs informed the society that in respect of the said shop they had not done anything in contravention of the plan and that the said shop had been allotted in favour of Defendant No.3 and that the Plaintiffs had nothing to do with it.

11. Mr.Shah sought to explain the letter by stating that it was in reply to the first Defendant’s letter dated 7.8.2002 wherein an allegation was made

regarding the alleged sub-division of the said shop. It is pertinent to note that even the first Defendant in paragraph 6 of the said letter has expressly stated that Defendant No.3 has been given the shop.

12. Further, the doubt, if any, is removed by what is stated by the Plaintiffs themselves in an affidavit filed as recently as on 5.8.2002 in Writ Petition No.2026 of 2002. In paragraph 1 the Plaintiffs have stated that they had duly constructed the said 15 shops, which included the suit shop "and handed over to the Respondent No.4 Society (Defendant No.1 herein) which in turn has allotted the said shops to its members." In paragraph 4 the Plaintiffs stated that Defendant No.3 herein holds and/or was allotted the said shop.

13. In the circumstances, it cannot be said that the Plaintiffs were, in fact, in possession of the said shop.

14. In the circumstances, the Notice of Motion is dismissed. The ad-interim order to continue for a period of four weeks from today.